

IN THE
United States
Circuit Court of Appeals
For the Ninth Circuit

R. L. Sabin,

Petitioner,

vs.

Blake, McFall Company, a corporation, Knight
Packing Company, a corporation, Hazelwood
Company, a corporation, and William H.
Dryer and W. W. Bollam, partners trading as
Dryer, Bollam & Company,

Respondents,

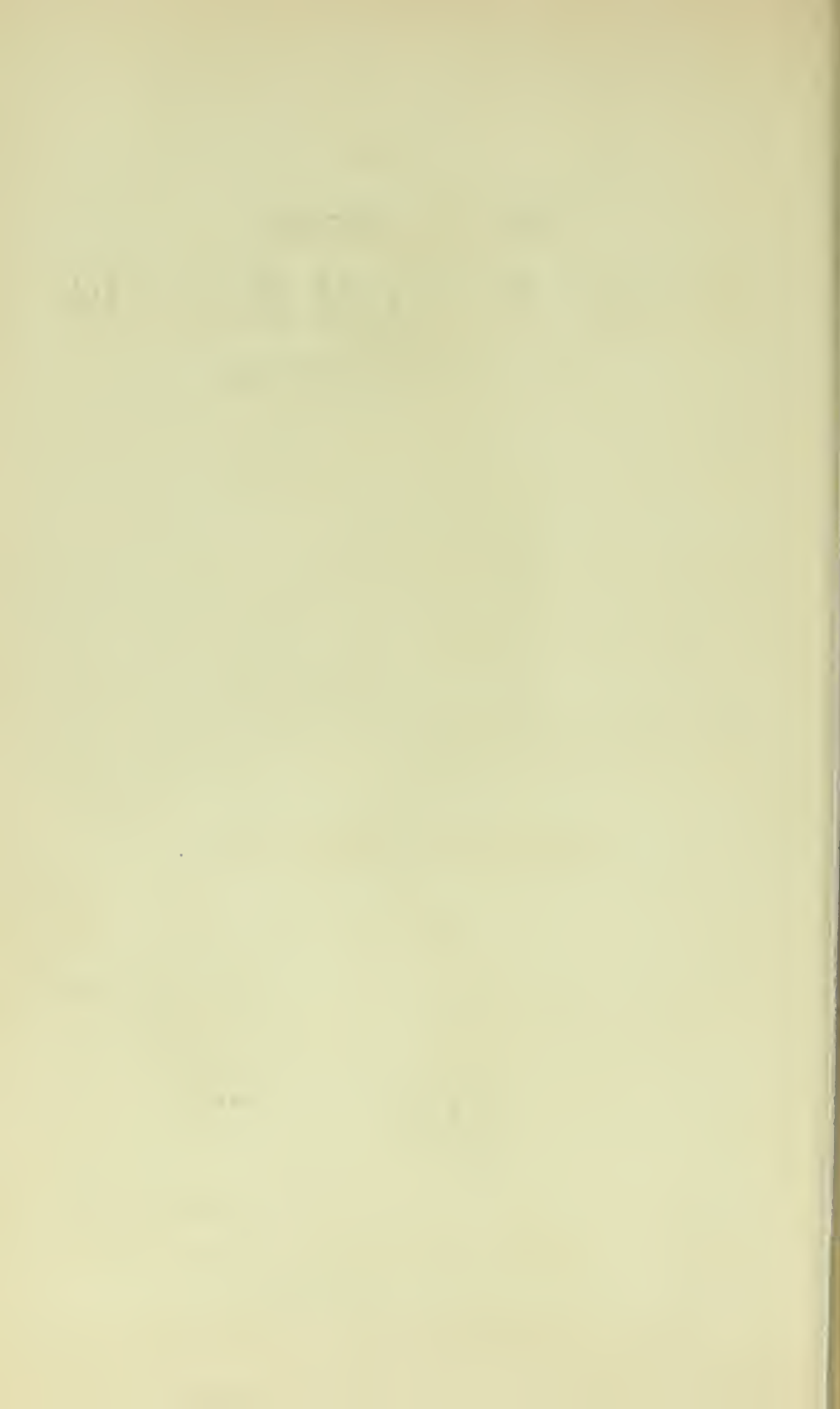
In the matter of
Equal Rights Company, Inc.
Alleged Bankrupt.

Petition for Rehearing
and
Motion

For an Order Vacating Order of this Court of May 24, 1915, and
for an Order Dismissing Petition Denominated "Creditors'
Second Amended Petition," as Verified by Amended
Verification Dated May 20, 1915; and for Costs
as Directed in the Opinion of this Court
Filed May 10, 1915.

Filed

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Comes now R. L. Sabin, petitioner herein, and respectfully represents, petitions and moves the court as follows:

That on the 10th day of May, 1915, this Honorable

Court handed down an opinion in the above entitled cause, wherein it held, amongst other matters, that the verification to the petition filed in the lower Court was defective because the petitioners did not verify it upon knowledge, as prescribed by the forms promulgated by the Supreme Court, and in which it further held that the defect not being jurisdictional the petitioning creditors, respondents herein, were permitted to file an amendment upon terms, the court, in concluding said opinion saying:

“The order will therefore be, that the petitioning creditors have leave to verify the petition in accordance with the prescribed form within ten days after notice of this order. If not so verified the order of the lower Court will be reversed and the creditors’ petition dismissed. Costs on this petition in favor of petitioner.”

And accordingly, an order was duly entered by this Honorable Court on said 10th day of May, 1915.

Your petitioner further represents that the petitioning creditors, respondents herein, were notified of said order by the clerk of this Court by letter dated May 10, 1915, which the attorneys for said respondents received not later than May 14, 1915.

That on the 21st day of May, 1915, your petitioner had served upon him an amended verification to the petition denominated “Creditors’ Second Amended Petition” in this cause, in attempted compliance with the order of this Court entered on said 10th day of May, 1915,

the original of which, it is assumed has been filed with this Honorable Court.

That more than ten days have elapsed since respondents had notice of the order of this Court entered May 10, 1915, in this cause, and no further or other verification has been made except the amended verification dated May 20, 1915, and served upon your petitioner on May 21, 1915.

That on the 24th day of May, 1915, an order was entered *ex parte* by this Honorable Court affirming the order of the lower Court reviewed in the above entitled matter with costs in favor of respondents and against the petitioner.

Your petitioner respectfully represents that said order of May 24th, 1915, is erroneous and should be vacated; first, because it was made without an opportunity on the part of your petitioner to object to the verification filed in attempted compliance with the order of this Court of May 10th, 1915, said verification in fact not being in compliance with the order of this Court of May 10, 1915; and, secondly, because the order itself is at variance and inconsistent with the opinion filed by this Court May 10, 1915, and the order of May 10th, 1915, made pursuant thereto in this cause, in that said order of May 24th, 1915, allows costs against the petitioner, whereas said opinion filed May 10, 1915, and the order made pursuant thereto, directs the awarding and awards costs in favor of the petitioner and in that said order of May 24, 1915, affirms the order of the lower Court whereas the opinion filed May 10th, 1915, and the order pursuant thereto in effect reverses the order of the lower Court since one of the contentions of the petitioner in the lower Court and in this Court upon review was that the

verification was not proper and sufficient, and this Honorable Court in its opinion so held, whereas the lower Court held otherwise.

Your petitioner further shows that the amended verifications to said petition are faulty and defective and therefore are not in compliance with the order of this Court entered May 10th, 1915, in that the verification of Blake, McFall Company, of Knight Packing Company and of Hazelwood Company, does not set out that the officers making the same had authority to sign or verify the petition in bankruptcy, and no such allegation is made in the petition.

Your petitioner further shows in respect to said verification that in the lower Court the Second Amended Petition (not the petition denominated "Second Amended Petition" in the records before this Court upon motion to dismiss, was held faulty because the verification did not show that the officers executing the same (being the same officers, with one exception, who executed the amended verification filed herein) had authority to sign and verify the petition in bankruptcy. Your petitioner further states that the lower Court handed down no written opinion in the matter, but in substantiation of this fact your petitioner respectfully refers the Court to verification of the creditors' petition, denominated "Creditors' Second Amended Petition" set forth in the transcript of record herein, pages 18 to 20, in which all of the verifications set forth that the parties making the same were duly authorized to sign the petition, while no such allegation was made in the verification to the Creditors' Second Amended Petition to which a motion to dismiss was allowed in the lower Court with power to

amend, and which was accordingly amended as set forth in the Transcript of Record, pages 18 to 20.

Your petitioner, as authority for said assertion that the amended verifications filed in attempted compliance with the order of May 10th, 1915, by this Court, are faulty and defective, respectfully refers this Honorable Court to the following cases:

In re: McNaughton, 8 Natl. Bankruptcy Rep. 44, Fed. Case No. 8912, Vol. 16, page 323.

In re: Roche v. Fox, 16 Natl. Bankruptcy Rep. 461, Fed. Case No. 11,974, Vol. 20, page 1065.

In re: Bellah, 116 Fed. 69, 76.

Black on Bankruptcy (1914), Sec. 162, page 406.

Remington on Bankruptcy (2d Ed.), Sec. 279, Vol. 1, page 255.

In the case In re: McNaughton, 8 Natl. Bankruptcy Rep. 44, Fed. Case No. 8912, Vol. 16, page 323, it is said, upon a similar objection to the one here made:

“I do not think any officer of a corporation has authority, by virtue of his office, to sign and verify a petition for adjudication of bankruptcy against a debtor of the corporation, unless specially authorized by some statute, by law or resolution of its board of directors. Such authority, being special, must in all cases be made to appear by the oath of the person signing and verifying the petition, or other com-

petent evidence. This was not done in this case, and if the respondent had stood upon his motion to dismiss, I should have come to the conclusion that the motion should be granted, so far, at least, as to vacate the order to show cause."

And so, in *In re: Bellah*, 116 Fed. 69, 76, sustaining a similar objection, it is said:

"This objection is, in my opinion, well taken. A corporation can act only through its officers or agents; and where its name is subscribed by an individual to a petition and the petition purports to be verified by the same person it is necessary that such person should set forth under oath or affirmation that he was authorized to sign and verify the petition on behalf of the corporation. The omission of such an averment unless remedied is fatal."

And so it is said by Black, in his work on Bankruptcy, Section 162, page 406:

"And in the case of a corporation, its name may be signed and the petition verified for it by its attorney, by an agent, or by one of its officers duly authorized to act for it in this particular. But this authority must be special. Neither the president nor any officer of a corporation has author-

ity, by virtue of his office, to sign and verify a petition for adjudication of bankruptcy against a debtor of the corporation, unless specially authorized by some statute, by-law, or resolution of its board of directors. Such authority, being special, must in all cases be made to appear by the oath of the person signing and verifying the petition or other competent evidence.' ”

Your petitioner further represents that the amended verification of Blake, McFall Company is particularly defective in that such special authority is not shown since the petition was signed in the name of Blake, McFall Company, by its Secretary, (See Record, page 18), while the amended verification is made by the President.

WHEREFORE, your petitioner prays:

First: That the order of May 24, 1915, be vacated, and that an order be entered by this Court dismissing the petition, without power to amend, since the amended verification filed in this Court is faulty and therefore not in compliance with the order of this Court of May 10, 1915; and

Second: That costs be awarded to petitioner as directed in the opinion of said Court filed May 10, 1915.

R. L. SABIN,

Petitioner.

United States of America,)
Dist. and State of Oregon,) ss.
County of Multnomah,)

I, R. L. Sabin, being first duly sworn, depose and say

that I am the Petitioner in the above proceeding, whose name is signed to the foregoing Motion, and that all the facts contained therein are true as I verily believe, and that the foregoing is not interposed for delay.

R. L. SABIN.

Subscribed and sworn to before me this 27th day of May, 1915.

SIDNEY TEISER,

Notary Public for Oregon.

My commission expires August 8, 1916.

United States of America,)
Dist. and State of Oregon,) ss.
County of Multnomah,)

I hereby certify that the foregoing Motion is, in my opinion, well founded in point of law, and is not interposed for delay.

Dated at Portland, Oregon, this 27th day of May, 1915.

SIDNEY TEISER,

Attorney for R. L. Sabin,

~~Respondent~~

Petitioner